



**BILLING CODE: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XF343**

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Russian River Estuary Management Activities**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of Letter of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the Sonoma County Water Agency (SCWA) for the take of marine mammals incidental to Russian River estuary management activities in Sonoma County, California.

**DATES:** Effective from April 21, 2017, through April 20, 2022.

**ADDRESSES:** The LOA and supporting documentation are available online at:

*www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

## **Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

## **Summary of Request**

On September 2, 2016, we received an adequate and complete request from SCWA for authorization to take marine mammals incidental to estuary management activities. On December 30, 2016 (81 FR 96415), we published a notice of proposed rulemaking in the **Federal Register**, requesting comments and information related to the SCWA request for 30 days. The final rule was published in the **Federal Register** on March 15, 2017 (82 FR 13765). For detailed information on this action, please refer to those documents. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during estuary management activities in Sonoma County, California.

The specified activity involves management of the estuary to prevent flooding while preventing adverse modification to critical habitat for Endangered Species Act-listed salmonids. During the lagoon management period (May 15-October 15), this involves construction and maintenance of a lagoon outlet channel that would facilitate formation of a perched lagoon. A perched lagoon, which is an estuary closed to tidal influence in which water surface elevation is above mean high tide, would reduce flooding while maintaining beneficial conditions for juvenile salmonids. Additional breaches of the barrier beach may be conducted for the sole purpose of reducing flood risk.

There are three components to SCWA's ongoing estuary management activities: (1) lagoon outlet channel management, during the lagoon management period only, required to accomplish the dual purposes of flood risk abatement and maintenance of juvenile salmonid habitat; (2) traditional artificial breaching, with the sole objective of flood risk abatement; and (3) physical and biological monitoring in and near the estuary, required to understand response to water surface elevation management in the estuary-lagoon system. SCWA is authorized to take

individuals of three species by Level B harassment only. No takes by Level A harassment, serious injury, or mortality are anticipated.

### **Authorization**

We have issued a LOA to SCWA authorizing the take of marine mammals incidental to estuary management activities, as described above. Take of marine mammals will be minimized through implementation of mitigation measures designed to eliminate startling reactions that may result in stampedes or extended mother-pup separation, to further reduce the possibility of impacts to pups by eliminating or altering management activities on the beach when pups are present, and by setting limits on the frequency and duration of events during pupping season (March 15-June 30). Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The SCWA will submit reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described under this LOA will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: May 10, 2017.

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Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.